

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 85-489-RGS

UNITED STATES OF AMERICA

v.

METROPOLITAN DISTRICT COMMISSION, et al.

CIVIL ACTION NO. 83-1614-RGS

CONSERVATION LAW FOUNDATION  
OF NEW ENGLAND, INC.

v.

METROPOLITAN DISTRICT COMMISSION

**SCHEDULE SEVEN COMPLIANCE ORDER NUMBER 247**

July 16, 2020

STEARNS, D.J.

On June 18, 2020, the Massachusetts Water Resources Authority (MWRA) filed its Biannual Compliance and Progress Report (the 247<sup>th</sup> such report over the course of this now 35-year-old litigation). With the Report, the MWRA filed a copy of the Semiannual CSO Discharge Report No. 4, July 1, 2019 – December 31, 2019, which issued on April 30, 2020. The United

States and the Conservation Law Foundation have since indicated that they do not intend to comment.<sup>1</sup>

As previously noted, the MWRA, the United States Environmental Protection Agency (EPA), and the Massachusetts Department of Environmental Protection (DEP), entered an agreement (approved by the court at a July 19, 2019 hearing), extending the completion date of the performance assessment of the Long-Term Combined Sewer Overflow Control Plan (LTCP) to December 31, 2021.<sup>2</sup> Under the terms of the agreement, the MWRA recalibrated the hydraulic assessment model used in the performance testing of the LTCP using metering and rainfall data gathered in 2018 and 2019. The updated model has allowed the MWRA to simulate the performance of the system with Typical Year rainfall and compare the results with the goals set out in the LTCP.

The results are both positive and mixed. On the positive side of the ledger, the Typical Year results show an 87% region-wide reduction in annual CSO discharge volume (as opposed to the modestly higher 88% envisioned

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<sup>1</sup> There were no scheduled activities during the past six-month period on the court's Schedule 7.

<sup>2</sup> As part of the Agreement, EPA and DEP, acting pursuant to 40 C.F.R. § 131.14 and 314 CMR 4.03(4), respectively, granted the MWRA's request to extend existing water quality variances affecting the Lower Charles River/Charles River Basin and Alewife Brook/Upper Mystic River through 2024.

in the LTCP). On the less positive side of the ledger, the assessment has identified regulators and outfalls where CSO activity exceeds the desired (previously predicted) levels. These include discharges to the Fort Point Channel at Outfall BOS070 (which accepts CSO from the Dorchester Brook Conduit),<sup>3</sup> as well as issues involving nozzle restrictions in the connections between BWSC CSO regulators and the MWRA's East Boston Branch Sewer, issues involving stormwater-influenced discharges from the City of Cambridge affecting the Cottage Farm Facility, and a leaking tide gate downstream of the Somerville Marginal Facility that has taxed the capacity of Outfall SOM007A/MWR205A on the Upper Mystic River Basin. Further mitigation efforts are also required by the variances granted for the Lower Charles River and the Alewife Brook/Upper Mystic River.

As the Compliance Report candidly admits, the assessment is very much an ongoing process. The hydraulic model that has been used over the past three decades, despite adjustments, is imperfect (although consistent in accurately reflecting positive trends over time). But as the Report states, earlier versions of the model, which had predicted volumes below LTCP goals

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<sup>3</sup> The MWRA is in the process of determining if a sediment cleaning contract commissioned by the Boston Water and Sewer Commission (BWSC) involving the North Branch of the South Boston Interceptor has been successful in rectifying this problem.

for some reviewing waters, have proven overly optimistic in light of the recent recalibrations. In perhaps its most important conclusion, the Report notes that “[l]ooking ahead, receiving water model simulations in the next year will be critical in demonstrating that the objectives of the LTCP have been satisfied for the CSO variance waters.” Report at 8. Ultimately, as framed by the Report, in meeting the desired water quality standards a choice may have to be made between further investment in CSO mitigation or placing greater emphasis on controlling non-CSO pollution contributions. As the data are at this point inconclusive, the court will reserve any comment on the progress of the assessment of LTCP until it is in a better position to make an informed evaluation.<sup>4</sup>

On the implementation of the CSO variances to the surface water quality standards for the Lower Charles River/Charles Basin and the Alewife Brook/Upper Mystic River, progress is reported to have been steady. The Alewife Brook Pump Station Optimization Evaluation Project, the Somerville Marginal CSO Reduction Project Study, and the CSO System Optimization evaluations for the Alewife Brook and Lower Charles River Basin Project, are

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<sup>4</sup> As the Report concludes, the MWRA “anticipates that its December 2020 compliance and progress report will include ample detail to forecast whether the LTCP goals will be achieved at certain locations and the potential next steps to be taken.” Report [Dkt #1876] at 13-14.

underway or well within the planning stages. The MWRA is also making aggressive efforts to meet the public access requirements of the variances with its website and other outreaches.

On a final note, the Report gives a well-deserved round of applause to the 1150 MWRA employees, who in the midst of a global pandemic, have worked tirelessly in the face of the risk to their own health and safety, to deliver clean and safe drinking water to the MWRA's Massachusetts customers, to ensure uninterrupted wastewater treatment, and to preserve the pristine quality of the Commonwealth's water sources and as well as its majestic Boston Harbor (and on top of these essential undertakings, to continue to collect the data necessary for the ongoing LTCP assessment).

ORDER

Consistent with the court's revised Scheduling Order, the MWRA will submit Compliance Report No. 248 on or before December 21, 2020.

SO ORDERED.

/s/ Richard G. Stearns  
UNITED STATES DISTRICT JUDGE